

**PROFESSIONAL FEE AND EXPENSE GUIDELINES  
IN BANKRUPTCY CASES PENDING BEFORE  
THE HONORABLE ROBERT E. NUGENT,  
UNITED STATES BANKRUPTCY JUDGE**

(Effective January 31, 2002)

I. INTRODUCTION; COURT’S PHILOSOPHY AND APPROACH; APPLICABILITY OF THESE GUIDELINES.

- A. *Introduction.* For the benefit of the practicing bar both in the Wichita Division and from other locales, the Court has developed the following fee and expense guidelines. The Guidelines are based upon this Court’s interpretation of 11 U.S.C. §§327-331<sup>1</sup>, Fed. R. Bankr. P. 2016, and this Court’s recent experience as a lawyer practicing in bankruptcy court.
- B. *Philosophy and Approach.* This Court’s philosophy concerning fees and expenses to be drawn from bankruptcy estates is simple. While the Court recognizes the need for capable estate counsel and professionals to be compensated fairly, and at a level which is commensurate with that enjoyed by nonbankruptcy professionals, bankruptcy estates almost always lack sufficient assets to satisfy all creditor demands. The Court strives to balance the need to fairly compensate professionals with the duty of the bankruptcy system to maximize the assets in estates for the benefit of the creditor body. Estate professionals are called upon to make that their highest concern. While they should be fairly and promptly paid for their labors on behalf of the estate, the integrity of the bankruptcy system requires that the interests of the creditors always be foremost. This Court will approach the allowance of professional fees and expenses with that concern for the creditors’ affairs, leavened by a desire to recognize the practical and economic realities of professional practice. As a rule, this Court reviews all fee applications submitted to it. Because these are guidelines and not statutes or rules, this Court may, in rare but appropriate circumstances, depart from them to prevent substantial injustice.
- C. *Applicability.* These guidelines apply to all professional fees sought to be allowed under §§327 and 328. Absent a compelling reason to do otherwise, the Court will apply these Guidelines to requests for allowance of secured claim enhancements under §506(b) and surcharges under §506(c).

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<sup>1</sup>All statutory references hereafter are to the Bankruptcy Code, 11 U.S.C. §101, et seq., unless otherwise noted.

## II. RETENTION OF PROFESSIONALS:

- A. *Need for Appointment.* In order to be compensated, the estate must obtain court approval for the employment of professionals. See 11 U.S.C. §327. **Professionals whose appointment has not been approved will not be granted compensation.** Employing equitable principles, the Court will grant nunc pro tunc relief to professionals who have failed to obtain Court approval before undertaking estate work. Professionals need be aware that this relief will be accorded only in extraordinary or exigent situations. Ordinary neglect will not likely be a basis for nunc pro tunc employment. Trustees or debtors in possession employing attorneys and other professionals not accustomed to practicing in this area should take special care to have their allied professionals' employment approved.
- B. *Retention Effect.* Procuring the Court's approval of the appointment of a professional does not insulate that person from the Court's review of fees requested or the possibility that the Court may be required to exercise its statutory power and duty to reduce or disallow fees or expenses. The Court may allow compensation different from that provided for in any agreement if the terms prove to have been improvident ". . . in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. §328(a). Moreover, the fees and expenses allowed shall be reasonable compensation for the actual and necessary services or expenses performed or incurred in service to the estate. See 11 U.S.C. §330(a)(1) and (3).

## III. RATES. The following discussion of rates applies to attorneys, accountants and other professionals who charge on a time basis. The Court understands that other professionals such as auctioneers or appraisers may charge fees on a different basis.

- A. *Local Attorney/Accountant Rates.* Local attorneys and accountants will be compensated at their customary and usual rates subject to the Court's power to limit fees and expenses under §328.
- B. *"Out of Town" or "National" Rates.* When professionals are engaged in cases of national scope or which present complex issues requiring the skill and experience of attorneys or accountants from other areas, their employment will be approved at their customary and usual rates, again subject to the Court's power to limit their fees and expenses under §328.
- C. *Paraprofessionals.* The Court encourages the use of paraprofessionals in bankruptcy cases to perform non-legal tasks at a lower cost to the estate and its constituents. Paraprofessionals will be compensated at the usual and customary rates charged by the attorneys or accountants for whom they work.

IV. APPLICATION PROCESS. Section 330(a) requires that compensation be awarded to professionals only after notice and a hearing. Notice must be given to the parties in interest and the U. S. Trustee. Fee applications should be set on the Court's monthly miscellaneous docket, but may be "negatively noticed" – in other words, if objections are not filed to the application, it may be approved without further hearing. However, applicants should be aware that the Court does review all fee applications whether objections are filed or not and that the lack of an objection to the application does not assure its approval without the Court's modification.

A. *Information Necessary on All Applications:* Whether or not the applications filed are for monthly, interim or final allowance of compensation, all applications must contain the following information in order to be considered and approved. The Court may require additional information be provided where circumstances warrant. Nothing contained herein limits the Court's powers under §§ 326-331, applicable Federal Rules of Bankruptcy Procedure (Fed. R. Bankr. P.), and the Local Bankruptcy Rules of Practice (L.B.R.).

1. The identity of the applicant and who applicant represents;
2. Date of case filing;
3. Dates of (a) application for; and (b) order of appointment of applicant;
4. A statement regarding whether the application is interim or final and, if interim, which interim application (first, second, etc. interim application for services rendered from [date] to [date]);
5. A recapitulation of –
  - a. Previous payments made to applicant;
  - b. The payments' source;
  - c. The dates of said payments; and
  - d. The amounts of compensation and reimbursement previously approved by the Court;
6. The amount of fees and expenses requested;
7. Relative to EXPENSES, the following –
  - a. Date incurred;

- b. Exact nature of expense (e.g., number of copies and rate per copy);
- c. Purpose or need for incurring such expense (e.g., copies of plan for solicitation of ballots);
- d. Any profit margin, markup or other overhead factor realized on any expense item.

8. Relative to FEES, the following –

- a. Name(s) of the individual(s) who have worked on the case during the period, their titles and positions and their hourly rates;
- b. *Individual and separate entries* describing each service performed including –
  - (1) Who did the work;
  - (2) Date it was performed;
  - (3) A specific, detailed description of work done and, where not self-evident, the purpose of the work;
  - (4) Identity of the parties involved in work performed;
  - (5) The amount of time spent on each task (in increments of tenths of an hour); and
  - (6) The dollar value of the work performed.
- c. Receipts: Members of Official Creditors Committees and non-lawyer professionals shall submit receipts in support of reimbursable expense claims; attorney applicants shall, absent further Court order, be excused from submitting receipts.<sup>2</sup>

V. WHAT IS COMPENSABLE.

A. *Fees.*

- 1. In determining whether the amount of time expended on a particular activity is reasonable, the Court is guided by In re Permian Anchor Services, Inc., 649 F.2d 763, 768 (10th Cir. 1981), which adopted the lodestar analysis set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), which looks to the following factors:

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<sup>2</sup>By signing fee and expense applications, attorneys certify that the statements contained in them are true, See Fed. R. Bankr. P. 9011.

- a. The time and labor required;
    - b. The novelty and difficulty of the questions;
    - c. The skill requisite to perform the legal service properly;
    - d. The preclusion of other employment by the attorney due to acceptance of the case;
    - e. The customary fee;
    - f. Whether the fee is fixed or contingent;
    - g. Time limitations imposed by the client or the circumstances;
    - h. The amount involved and the results obtained;
    - i. The experience, reputation, and ability of the attorneys;
    - j. The "undesirability" of the case;
    - k. The nature and length of the professional relationship with the client; and
    - l. Awards in similar cases.
  2. The Court will also make a separate determination of the necessity of the services for which compensation is being requested, see In re Lederman Enter., Inc., 997 F.2d 1321 (10<sup>th</sup> Cir. 1993), including whether the services benefitted the bankruptcy estate.
- B. *Paralegal Fees*: The principles set out above for usual and customary rates of local and national attorneys shall apply to the rates of their respective paralegal employees. Time entries for paralegals should not include secretarial or clerical tasks.
- C. *Other Professionals*: Other professionals who ordinarily bill on an hourly basis may be allowed their usual and customary rate, subject to the Court's discretion. Flat fees for accountants, financial advisors, investment bankers, or consultants are disfavored and will not be approved unless approved upon prior application for cause shown.
- D. *Compensable Components of Attorney and Paralegal Fees*
1. Fee Applications: reasonable time spent in preparation of fee application. In re Seneca Oil Co., 65 B.R. 902, 910 (Bankr. W.D. Okla. 1986);
  2. Prepetition: only time spent in preparation for or contemplation of filing bankruptcy;
  3. Personal services: services that benefit bankruptcy estate are compensable. Services that benefit debtor personally are not compensable (e.g. defense of Section 523 and 727 actions);

4. Travel: nonlocal travel compensated at counsel's usual and customary hourly rate. Travel must be apportioned among all the cases on which attorney appears.
5. Interoffice conferences among attorneys are compensable subject to a showing that they are reasonable, necessary and not duplicative.

E. *Components of Attorney and Paralegal Fees that are Not Compensable*

1. Clerical or secretarial work – filing, organization of files, mailing, copying;
2. Time spent "educating an untrained apprentice or familiarizing oneself with general Code provisions or basic law" is not compensable. Attorneys are required to have some minimum level of expertise. In re Seneca Oil, 65 B.R. 902, 912 (Bankr. W.D. Okla. 1986);

F. *Expenses.*

1. What is compensable –
  - a. Extraordinary photocopying-actual, reasonable and necessary;
  - b. Extraordinary postage expense-actual, reasonable and necessary;
  - c. Long distance telephone calls;
  - d. Fees charged by clerk's office for copies from the file;
  - e. Certified mail if shown to be required by law;
  - f. Out of town travel, including coach class airfare, tolls, parking, necessary lodging and meals, nonlocal mileage at IRC rate;
  - g. Express mail or delivery- actual and necessary costs;
  - h. Telefacsimile charges- actual, reasonable and necessary long-distance telephone charges; and
  - i. Computerized legal research- actual and reasonable cost over monthly subscription fee.
2. What is not compensable –
  - a. Ordinary photocopying- routine correspondence;
  - b. Ordinary postage expense- routine correspondence;
  - c. Telephone Service;
  - d. Word processing;

- e. Court fees;
- f. Office overhead, including, but not limited to: rent; utilities; insurance; taxes; clerical or secretarial wages, salary, benefits and overtime; local telephone charges;
- g. Local travel;
- h. Messenger service; and
- i. Library costs, expenses.

VI. INTERIM AND FINAL APPLICATION PRACTICE: The Court recognizes that forcing counsel or accountants to await the conclusion of a case to obtain compensation results in professionals actually financing the case. Therefore, the Court welcomes interim applications for compensation as contemplated by §331. All interim applications must contain a recapitulation of all fees and expenses applied for and awarded to the date of the application's filing so that the Court may know a running total of fees and expenses incurred at each stage of the case.

A. *Applications for Monthly Payments:* Counsel and other professionals should consult L.B.R. 2016.1(a) which, as it will be amended in March of 2002, will provide that only counsel for the debtor may apply for leave to be paid on a monthly, rather than a quarterly, basis for his or her services in the conduct of the case. This is a revision of a previous rule which permitted all estate professionals to apply to draw fees monthly. The Court believes that, in appropriate circumstances, it may authorize other estate professionals (such as counsel for a committee) to be paid monthly. The allowance of monthly draws under L.B.R. 2016.1(a) is by no means automatic and the Court certainly reserves the right to conduct a hearing to determine the extent of counsel's need to be compensated monthly.

- a. Applications for monthly draws should be noticed to the docket and **should not be** combined with applications for employment.
- b. Counsel may apply for allowance of 100 percent of the fees incurred in a given month and 100 percent of the expenses incurred. Such applications may be approved, provided, however, that where 100 percent of the fees are allowed, counsel shall retain 20 percent of the fees in trust pending approval by this Court of an interim or final application, unless otherwise ordered.
- c. As with interim applications under §331, all monthly applications and orders submitted thereon shall contain a clear statement of what payments have been received by the applicant to the date of the present

application, the source of those payments, the date of the payments and what payments and reimbursements of fees and expenses have previously been approved by the Court. From the order's terms, the Court should be able to ascertain, without further research in the file, how much the conduct of the case has cost in attorneys fees and expenses at any given application date. **After sixty days following the date of these guidelines (January 31, 2002), orders lacking any of this information will be returned.**

- B. *Final Applications:* When a professional has received compensation and/or reimbursement on either a monthly or an interim application, the orders granting same shall be deemed **interim** only and the orders remain subject to the Court's review of the final application, usually filed at the conclusion of the case (e.g., after confirmation of a plan, completion of an estate's administration, etc.). Counsel and allied professionals should understand that until a final fee application is approved, the Court retains the power to enhance or reduce fees and expenses previously approved as well as the power to order the disgorgement of some or all of such fees in appropriate situations. See §329(b).

- VII. CONCLUSION: The Court recognizes that in the creation of these guidelines it may not have anticipated every conceivable fee and expense concern which could be raised by counsel or other professionals. Questions should be directed either to the Court's Law Clerk or to the Courtroom Deputies in the office of the Clerk of the Court.

January 31, 2002

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ROBERT E. NUGENT, BANKRUPTCY JUDGE  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS